

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**

**LEONA R.,<sup>1</sup>**

Plaintiff,

v.

**COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,**

Defendant.

Case No. 3:18-cv-1151-AC

**ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge John V. Acosta issued Findings and Recommendations in this case on September 11, 2019. ECF 18. Magistrate Judge Acosta recommended that Defendant Commissioner’s decision that Leona R. (“Plaintiff”) is not disabled under the Social Security Act and thus not entitled to Disability Insurance Benefits be reversed and remanded for further proceedings. The Court **ADOPTS** the Findings and Recommendation for the following reasons.

Under the Federal Magistrates Act (“Act”), the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.

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<sup>1</sup> In the interest of privacy, this Order uses only the first name and the initial of the last name of the non-governmental party in this case.

§ 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

Plaintiff timely filed objections (ECF 20) to which Defendant responded (ECF 21). Plaintiff argues that (1) Magistrate Judge Acosta incorrectly rejected Plaintiff’s claim that the ALJ erred by assigning little weight to the medical opinions of the two non-examining state agency physicians; and (2) Magistrate Judge Acosta should have remanded the Commissioner’s decision for immediate calculation and payment of benefits. ECF 20 at 1.

The Court has reviewed *de novo* Magistrate Judge Acosta’s Findings and Recommendation, as well as Plaintiff’s objections and Defendant’s response. The Court agrees with Magistrate Judge Acosta’s analysis reversing and remanding the decision. The ALJ rejected the opinions of Dr. Davenport and Dr. Nisbet because they were inconsistent with the

“essentially normal” physical examination results in the record. AR 95-96. This is a “specific and legitimate reason . . . that is supported by substantial evidence.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (quoting *Lester v. Charter*, 81 F.3d 821, 830 (9th Cir. 1995)). Thus, Plaintiff was not entitled to an immediate determination that she is disabled, and remand for payment of benefits is inappropriate.

For those portions of Magistrate Judge Acosta’s Findings and Recommendations to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Magistrate Judge Acosta’s Findings and Recommendation. ECF 18. The decision that Plaintiff is not disabled is **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings not inconsistent with the Findings and Recommendation.

**IT IS SO ORDERED.**

DATED this 16th day of December, 2019.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge